

Office of the Attorney General State of Texas

DAN MORALES

July 24, 1995

Mr. G. Mike Davis
State Fire Marshal
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR95-661

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30418.

The Texas Commission on Fire Protection (the "commission") received a request for information relating to a certain fire. Specifically, the requestor seeks "whatever parts of the investigative file that can be released" in a case involving a structural fire at a business in Alvin, Texas. You advise us that you have made some of the requested information available to the requestor. You object to the release of the remainder of the requested information, however, and claim that sections 417.007(g) and 552.108 of the Government Code except it from required public disclosure.

You advise us that the requested information relates to an active criminal investigation by the Office of the State Fire Marshal. We note that the Office of the Attorney General has recently issued Open Records Letter No. 95-642 (1995) a "previous determination" to the Texas Commission on Fire Protection pursuant to section 552.301 of the Government Code for records of active investigations the commission claims are excepted from disclosure under section 552.108. Accordingly, the commission may rely on the ruling in Open Records Letter No. 95-642 (1995) (copy enclosed) as a determination for this request for information. Please use the markings on the documents submitted with Open Records Letter No. 95-642 (1995) as a guide for releasing the information deemed open under Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). If you receive a new request for these records once the investigation is closed and you wish to withhold the records under section 552.108,

you may not rely on Open Records Letter No. 95-642 (1995). In that case, you must request a ruling from this office to explain how release of the records would unduly interfere with law enforcement. See Open Records Decision No. 611 (1992) at 2. As we resolve this matter under a "previous determination" for section 552.108, we need not address the effect of section 417.007(g) at this time.¹

Yours very truly,

Loretta R. DeHay Assistant Attorney General

Open Government Section

Oretta DeHay

LRD/LBC/rho

Ref: ID# 30418

Enclosures: Open Records Letter No. 95-642 (1995)

Submitted documents

cc: Mr. Charles Kautz

Property Supervisor

Performance Claims Service

P.O. Box 47522

San Antonio, Texas 78265-7522

(w/o enclosures)

¹We note, however, that if the commitment issued by the Justice of the Peace is a court record, it must be released. Attorney General Opinion DM-166 (1992); see Attorney General Opinion JM-1224 (1990) at 5-6.